

- H 11 cont*
- a) a CaMV 35S promoter region free of CaMV
protein-encoding DNA sequences and
b) a CaMV 19S promoter region free of CaMV
protein-encoding DNA sequences,

and a DNA sequence which is heterologous with respect to the promoter.

H 2

Please add the following new claims:

-- ¹⁸29. An intermediate plasmid of Claim ⁷~~10~~ in which the promoter is the
CaMV(19S) promoter.

¹⁹30. An intermediate plasmid of Claim ⁷~~10~~ in which the promoter is the
CaMV(35S) promoter. --

REMARKS

Reconsideration of the above amended application is respectfully requested.

Claims 4-11 and 13-28 were pending. Claims 11, 16-18 and 22-25 were rejected. Of those rejected claims, claims 11, 16-18 and 23-25 have been canceled and claim 22 has been amended. Claims 29 and 30 have been added as replacements for claims 11 and 23. Therefore claims 4-10, 13-15, 19-22 and 26-30 are now pending.

Claims 11, 22 and 23 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. This rejection is respectfully traversed.

Claims 11 and 23 were considered duplicative of each other since they both recited 35S as the promoter. Claims 11 and 23 have been replaced by claims 29 and 30 in which one recites 19S and one recites 35S. In view of this amendment, this

U.S. Serial No: 08/146,621
October 28, 1993
Page 3

rejection should be withdrawn.

Claim 22 was rejected as being indefinite. Claim 22 has been amended as requested by the Examiner. Therefore this rejection should be withdrawn.

The specification is objected to and claims 16-18 and 24-25 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to provide an adequate written description of the invention and failing to provide an enabling disclosure. This rejection is respectfully traversed.

Claims 16-18 and 24-25 have been canceled, thus obviating this rejection. However, applicants reserve the right to prosecute these claims in a continuation application because this rejection is believed to be improper. First, the claims do not call for expression of the gene, thus the uncertainty averred to by the Office Action is not applicable to the claims. Second, the invention, a chimeric gene containing the 35S or 19S CaMV promoter, is clearly enabled by the specification. Claims 16-18 and 24-25 are merely different ways of claiming the same invention and are in fact narrower in scope than claim 21, for instance. This rejection is in error, though obviated by the cancellation of these claims.

In view of the above amendments and remarks, allowance of the above application is respectfully requested.

Respectfully submitted,



Lawrence M. Lavin, Jr.
Attorney for Applicants
Registration No. 30,768

H

U.S. Serial No: 08/146,621

October 28, 1993

Page 4

Monsanto Company BB4F
700 Chesterfield Village Parkway
St. Louis, Missouri 63198
(314) 537-6670